

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

Anthony James Moore,)	ORDER ADOPTING REPORT AND RECOMMENDATION
)	
Plaintiff,)	
)	
vs.)	Case No. 1:06-cv-095
)	
Fargo Police Department,)	
)	
Defendant.)	

Before the Court is Plaintiff Anthony Moore's motion for summary judgment filed on February 21, 2007. See Docket No. 35. The matter was referred to Magistrate Judge Charles S. Miller for the issuance of a Report and Recommendation. See N.D. Ct. R. 72.1(A)(3). On April 16, 2007, Judge Miller issued a Report and Recommendation wherein he recommended that Moore's motion for summary judgment be denied, that summary judgment be entered against Moore, and that Moore's action be dismissed with prejudice and without costs to either party. On April 19, 2007, Moore filed an objection to the Report and Recommendation. See Docket No. 53.

Moore contends that he has not received the DNA records requested. On March 13, 2007, counsel for the Defendant filed an affidavit and attested that copies of the reports in possession of the Defendant had been mailed to Moore. See Docket No. 42. Moore contends that the Defendant is lying to the Court and has not come forward with all of the evidence. Moore has failed to provide any evidence to support this assertion.

The Court has carefully reviewed the Report and Recommendation, relevant case law, and the entire record and finds the Report and Recommendation to be persuasive. The Court **ADOPTS** the Report and Recommendation (Docket No. 52) in its entirety and **DENIES** Moore's motion for summary judgment. (Docket No. 35). The Court further **ORDERS** that summary judgment be entered against Moore and that the case be dismissed with prejudice and without costs to either party. The

Court certifies that any appeal would be frivolous, could not be taken in good faith, and may not be taken in forma pauperis. The Court further certifies that a certificate of appealability will not be issued with respect to any of the issues raised in this action.

IT IS SO ORDERED.

Dated this 23rd day of April, 2007.

/s/ Daniel L. Hovland

Daniel L. Hovland, Chief Judge

United States District Court